

No. 04-18-00309-CV

FILED IN
4th COURT OF APPEALS
SAN ANTONIO, TEXAS
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KEITH E. HOTTLE
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**IN THE COURT OF APPEALS
FOR THE FOURTH JUDICIAL DISTRICT
SAN ANTONIO, TEXAS**

LETICIA GARZA GALVAN AND MARTIE GARCIA VELA,
APPELLANTS,
V.
ELOY VERA AND BALDEMAR GARZA,
APPELLEES

*ON APPEAL FROM THE 229TH JUDICIAL DISTRICT COURT
OF STARR COUNTY, TEXAS; No. DC-18-186
HONORABLE JOEL JOHNSON, JUDGE PRESIDING*

**Appellants' Unopposed Motion to Include
Certain Sealed Exhibits in Record on Appeal and For Access to
Same**

TO THE HONORABLE COURT OF APPEALS:

Appellants respectfully move for an order that certain exhibits sealed by the trial court be included in the record on appeal, and that Appellants and their attorneys be granted access to such exhibits. Appellees are unopposed to these requests.

Although no written motion was filed and no public hearing was held as required under Texas Rule of Civil Procedure 76a, the trial court, on its own motion on the last day of trial, "order[ed] the District Clerk of Starr County to Place Under

Seal [certain] exhibits admitted in this trial.” C.R. 152 (Order to Seal). These were the following Contestant’s exhibits:

- 14 – (Paper and Video) Starr County Deputy Sheriff’s written incident report, with bodycam video on CD.
- 17 – (Paper) “Oath of Assistant” forms from various polling sites in the contested election
- 18 – (Paper) *Not requested as part of record on appeal*
- 26 – (Flash drive) Copies of applications to vote by mail, with carrier envelope copies and jacket envelope copies, related to all mail-in ballots that were accepted or rejected
- 27 – (Flash drive) Excel file with list of all Starr County registered voters
- 28 – (Flash drive) Excel file with list of all voters who voted in March 6, 2018 primary elections in Starr County
- 30 – (Flash drive) Scanned copy of two-page ballot transmittal form
- 31 – (Flash drive) Excel files recording dates the Election Department took certain actions as to mail-ballot applications and received ballots. See R.R. Vol.5, 129-30.
- 32 – (Paper) *Not requested as part of record on appeal*
- 33 – (CD) Excel files recording dates the Election Department took certain actions as to mail-ballot applications and received ballots. *Not requested as part of record on appeal.*

Id.

Exhibits 26, 27, 28, 30, and 31 are all saved on a single flash drive that was admitted at trial. See R.R. Vol. 5, p. 134 (“Okay. 26, 27, 28, (pause) 30 and 31. (Those exhibits are on the drive.)”). Although the current Master Index (R.R. Vol. 7, p. 10) states that Exhibits 32 and 33 are also “located on Exhibit 26, USB drive,” that is not correct. Exhibit 32 was admitted in paper form, see R.R. Vol. 5, p. 184-85, and is not being requested as part of this record on appeal. Exhibit 33 was

provided by the witness as a CD during trial, and that CD was admitted as its own exhibit. (The Master Index, Vol. 7, p. 10, states that the testimony of Alexy Rios accompanying Exhibit 33 is at Vol. 5, p. 200 and 203, but as Ms. Rios's testimony has not been requested as part of this record on appeal, that testimony is not in the record on appeal.) Exhibit 33 is not being requested as part of this record on appeal.

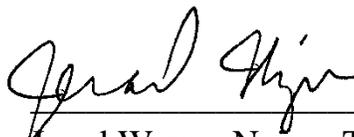
Appellants hereby request that the Court order that sealed exhibits 14, 17, 26, 27, 28, 30, and 31 be made a part of the record on appeal and transmitted in appropriate form to the Court of Appeals. Court Reporter Ramiro Hernandez's letter of May 25, 2018 indicates that he stands ready to transmit these exhibits to the Court, but is awaiting the Court's order to do so.

Mr. Hernandez's letter further seems to indicate that he is under the impression that he must arrange for delivery of the original exhibit to the court of appeals, as he refers to Texas Rule of Appellate Procedure 34.6(g)(2). However, the appellate rules require an electronic record, and Rule 34.6(g) reinforces this default rule, stating that “[u]nless ordered to include original exhibits in the reporter's record, the court reporter must return the original exhibits to the clerk *after copying them* for inclusion in the reporter's record.” Tex. R. App. P. 34.6(g)(1) (emphasis added). While the trial court has ordered certain exhibits sealed, it has not ordered any exhibit to be included in original form in the reporter's record. Accordingly, the default rule requiring an electronic record on appeal applies, and the Uniform Format Manual for Texas Reporters' Records (“Manual”) clearly contemplates electronic filing of sealed records: “Any sealed documents that are filed electronically must be

in a separate computer file.” Manual Rule 8.7. The Manual provides specific procedures for proper inclusion and designation of sealed records in the electronic record on appeal. *Id.* at 8.4, 8.7. Therefore, Appellants suggest, the default rule should apply, such that the originals of these records be maintained by the trial court clerk, and the sealed exhibits be reproduced for inclusion in the electronic record on appeal via a supplemental reporter’s record, in accordance with the special designation rules laid out in the Manual.

Lastly, Appellants hereby request that they and their attorneys be granted access to these sealed exhibits as part of the record on appeal. Each one of the sealed exhibits is necessary and important to Appellants’ arguments. Appellants need such access to ensure the proper materials are in the record, and to ensure the evidence can be appropriately cited in the briefs.

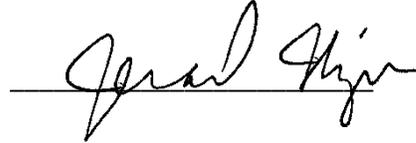
Respectfully submitted,



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CERTIFICATE OF CONFERENCE

I hereby certify that I have conferred today with counsel for Appellees, Mr. Carlos Escobar, and he advised that Appellees are not opposed to this motion. (Mr. McKibben has indicated that he is not counsel on appeal, and the undersigned understands that Mr. Escobar represents both appellees.)

A handwritten signature in black ink, appearing to read "Gerald Hijo", is written over a horizontal line.

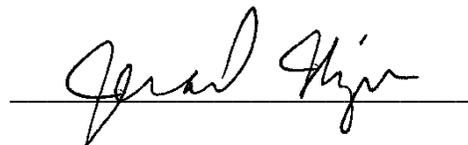
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document, along with any accompanying exhibits, has been served by eService on the following counsel of record on June 1, 2018.

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Ramiro Hernandez
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